U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 11Jul2001

CASE NO.: 2000-LHC-2625

OWCP NO.: 6-181350

IN THE MATTER OF

GARY R. WILLIAMS
CLAIMANT

VS.

JAMESTOWN METAL MARINE SALES, INC.
EMPLOYER

AMERICAN HOME ASSURANCE
CARRIER

APPEARANCES:
Billy Wright Hilleren, Esq.
For Claimant

Foster Nash, Esq.
For Employer/Carrier

BEFORE: C. RICHARD AVERY
Administrative Law Judge

DECISION AND ORDER

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et. seq.*, (The Act), brought by Gary R. Williams (Claimant) against Jamestown Metal Marine Sales Inc. (Employer) and American Home

Assurance (Carrier). The formal hearing was conducted at Mobile, Alabama on February 8, 2001. Each party was represented by counsel, and each presented documentary evidence, examined and cross examined the witnesses, and made oral and written arguments.[1] The following exhibits were received into evidence: Joint Exhibit 1, Claimant's Exhibits 1-21 and Employer's Exhibits 1-15, 17.[2] This decision is based on the entire record.[3]

Stipulations

Prior to the hearing, the parties entered into joint stipulations of facts and issues which were submitted as follows:

1. The date of the alleged injury/accident was December 3, 1999[4];

2. It is disputed that Claimant was injured in the course and scope of employment;

3. An employer/employee relationship existed at the time of the alleged accident;

4. The date Employer was advised of the injury is disputed[5];

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[1]The parties were granted time post hearing to file briefs. This time was extended up to and through April 11, 2001.

[2]The following exhibits were admitted post hearing: Claimant's Exhibit 23, Employer's Exhibit 18, and Employer's Exhibit 19.

[3] The following abbreviations will be used throughout this decision when citing evidence of record: Trial Transcript Pages- "Tr. __, lines __"; Joint Exhibit- "JX __, pg.__"; Employer's Exhibit- "EX __, pg.__"; and Claimant's Exhibit- "CX __, pg.__".

[4]*See* Claimant's Exhibit 1, LS-203.

[5]*See* Claimant's Exhibit 3 and Employer's Exhibit 1, LS-202. Employer first knew of injury on December 13, 1999. This document was signed by Claimant's supervisor, Billy Adcock.

5. Notice of Controversion was filed on December 17, 1999[6];

6. An informal conference was held on April 18, 2000;

7. Claimant's average weekly wage at the time of injury is disputed;

8. Temporary total disability and permanent disability is disputed;

9. No benefits have been paid to Claimant;

10. Some medical benefits have been paid to Claimant; and

11. The date of maximum medical improvement is disputed.

Unresolved Issues

The unresolved issues in this case are:

1. Causation;

2. Nature and extent of disability;

3. Average weekly wage;

4. Section 7 benefits;

5. Interest and penalties; and

6. Attorney fees and expenses.

Statement of the Evidence

Testimonial and Non Medical Evidence

[6]*See* Claimant's Exhibit 4, LS-207.

Claimant testified that he has had many occupations, including joiner, painter and tugboat pilot. Prior to being employed by Employer, Claimant worked for Borries Construction Company/Tucei's Fishing Camp.[7] He operated a crane to help build new apartments and experienced no back pain during this employment.[8]

In June 1999, Claimant and his future wife went sailing in his 36-foot Islander along the Florida coast for several months. The work involved in sailing this boat included weighing anchor, pulling sails, steering, and was very "strenuous." Claimant experienced no back problems during this period.

Claimant was hired by Employer on October 21, 1999, as a joiner. Joiners build the interior of ships and oil rigs. Two weeks prior to his alleged December 3, 1999 injury, Claimant carried bunks, tables, lamps, desks, wardrobes, filing cabinets, safes, etc., into the ship for installation. The bunks were lightweight, but very bulky. The cabinets weighed between 30 and 150 pounds. Claimant described the safes as "heavy, heavy, heavy." Claimant stands 6 foot 3 inches. He explained that as the hulls of the ship were not as high, he often squatted and awkwardly positioned himself to carry these items into the ship. Due to the size restriction of the rooms, he could not use "good body mechanics" while working.

When Claimant began experiencing some minor back discomfort and pain on December 3, 1999, he hoped the pain was due to a muscle strain, similar to one he experienced about two or three years earlier, that would be easily corrected with rest and medication. However, on December 8, 1999, after working an 8-hour shift, the pain became so severe that Claimant was taken to the emergency room of Singing River Hospital.[9] Claimant complained of lower back pain and left leg pain. He did not indicate at this time that his back pain was work related because he said he was afraid of losing his job.[10] The ER doctors believed Claimant had a pulled muscle and

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[7]Claimant testified that he worked there over a span of 20 years.

[8]In fact, Claimant underwent a physical in 1999 prior to working as a crane operator. It was his understanding that he was in good health.

[9]Claimant testified that he told his supervisor, Donald Ray, he needed to go the hospital.

[10]Claimant testified he was afraid of Billy Adcock. He had never before worked for Mr. Adcock, but prior to Claimant's injury Mr. Adcock commented to him about the quickness of his

recommended he take an extended weekend. They prescribed medication which relieved some of Claimant's pain.

The following day Claimant worked an 8-hour shift and filed the necessary paperwork with his supervisor, Donald Gibson, for a three day weekend. At this time, Claimant told Mr. Gibson and his partner, Billy White, that he injured his back while working on the ship. When Claimant returned to work after his extended weekend he requested light duty work because of the pain.

Claimant was taken to the emergency room for a second time on December 14, 1999. Claimant described the pain as something he had never before experienced. The doctors at Singing River Hospital prescribed more pain medication and recommended Claimant be examined by an orthopedic surgeon. December 14, 1999 was Claimant's last day of work for Employer.

Employer instructed Claimant to contact Sharron Cannon, the AIG claims adjuster. Claimant gave her a statement and was subsequently examined by Dr. Feinberg, who recommended Claimant be evaluated by an orthopedic specialist, Dr. Wiggins. Ms. Cannon referred Claimant to Dr. Crotwell for his examination.[11]

Dr. Crotwell evaluated Claimant in December 1999. He obtained Claimant's medical history, took x-rays, and explained to Claimant that his spine was "twisted."[12] Dr. Crotwell ordered physical therapy and medication. Shortly thereafter, however, Ms. Cannon denied authorizations for Claimant's physical therapy, medication, and office visits to Dr. Crotwell. Once these treatments were discontinued, Claimant received no further medical treatment, as it was too expensive.

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work. On December 14, 1999, Claimant told Mr. Adcock his back was injured and he was going to the hospital.

[11] *See* Claimant's Exhibit 17, written correspondence from Sharron Cannon informing Claimant of his scheduled appointment with Dr. Crotwell.

[12] Claimant testified that no doctor had ever before told him his back was "twisted." Claimant had previously pulled muscles, but never experienced this type of pain.

In January and February 2000, Claimant was depressed and went to Singing River Mental Health for treatment.[13] Claimant experienced back pain daily and began walking with a cane. The intensity of the pain varied daily, providing both "good and bad" days. Around this time, Claimant and his wife separated.

In April 2000, Claimant began working for Borries Construction and Tucei's Fishing Camp. Claimant was long-time friends with the father and both sons who ran the business. Claimant performed basic office work, working 20 hours per week, earning $175 per week. He performed office work until November 2000, when he was reassigned to a relief tugboat captain. As such he worked an average of 35 hours per week, earning $12 per hour.

In October 2000, Claimant went to Coastal Family Services and was referred to Dr. Ray, an orthopedist. Dr. Ray evaluated Claimant in December 2000 and recommended an MRI and examination by a neurologist. Employer refused to authorize further medical treatment and Claimant was unable to afford this test and follow-up evaluation.

Claimant continues to experience pain in his back, left leg and left knee. While the pain is not continuous, he does experience severe episodes. Claimant believes his spine is "twisted," and has difficulty sitting and walking. Claimant had no subsequent back injuries after his employment with Employer ended.

Marjorie Diane Williams, Claimant's wife, testified that she and Claimant are currently separated. Prior to their October 1999 marriage, Claimant never had any back problems. Ms. Williams and Claimant sailed along the Florida coast from June 1999 through October 1999. While on the 36-foot Islander, Claimant manned the helm, pulled sails and ropes, wrapped sails and picked up anchor. Claimant did the "hard work" that Ms. Williams could not perform. While Claimant performed his duties, he wore shorts, a light shirt, and at times, went bare-chested. Ms. Williams had opportunities to observe Claimant and never noticed anything unusual about the shape of Claimant's back, such as a curvature or twisting. In addition, Claimant never complained of back pain during their six month adventure.

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[13]Claimant had previously suffered from depression and was successfully treated at this facility. *See* Claimant's Exhibit 12 and Employer's Exhibit 11, Claimant's medical records.

Upon returning, Claimant began working for Employer in October 1999. Ms. Williams believed Claimant to be in perfect health with no back problems. Claimant first told her he injured his back in December 1999. He thought it was a result of carrying furniture for Employer. Ms. Williams stated Claimant's spine was no longer straight following his injury of December 1999. Immediately thereafter, she noticed Claimant had difficulty walking and moving around. On most days, Claimant leans, favors one side and requires assistance to sit, stand and move around.

Ella Geneva Mclemore testified that she was the office manager at Borries Construction and Tucei's Fishing Camp beginning in December 1998. K. L. Borries Construction is a marine construction company and Tucei's Fishing Camp is a fishing camp with sites for RV, cabin and boat stall rentals. She believed Claimant and Mr. Borries have been friends for 30 years.

In January 1999, Ms. Mclemore learned Claimant was employed by Borries/Tucei's as a tugboat captain. She spoke to Claimant daily about his duties, and was not aware of any medical problems Claimant had during the early part of 1999. Ms. Mclemore would have known of such problems, since she approved all doctor visits and did all of the billing. Claimant stopped working for Borries/Tucei's in June 1999.

Claimant was re-hired by Borries/Tucei's in April 2000 and worked in the office with Ms. Mclemore. Mr. Borries explained to her that Claimant could only perform light office work. Ms. Mclemore observed pain in Claimant's face and noticed Claimant could not sit for long periods of time. Eventually, Claimant returned to tugboat captain, working an average of 20 hours per week, earning $12 per hour. All employees were paid weekly.

Billy Wayne Adcock testified that he has worked for Employer for the last 12 years. He is the project superintendent, and held that position in 1999. Mr. Adcock was familiar with Claimant and understood him to work as a joiner and mechanic. He was also familiar with the following employees: Perry Rogers, Ronald Harding, and Albert Higgenbotham. All three men were joiners working on projects for Employer in 1999, performing work similar to that performed by Claimant.

Donald Ray Gibson testified that he has worked for Employer for 10 years. He was a joiner supervisor in 1999, and is currently a joiner. Mr. Gibson was Claimant's

supervisor, when Claimant worked for Employer. He used to speak to Claimant daily, about once an hour. In December 1999, Claimant mentioned his back "went out," but never explained how this occurred.

Two weeks prior to Claimant's hospitalization, he had installed furniture, such as desks, lockers, bunks, and desks into the ship, with his partner, Billy White. The file cabinets weighed between 150 and 300 pounds. The bunks weighed between 35 and 50 pounds. If possible, the furniture was rolled into place with a dolly. But, when the items were unable to be brought in on a dolly, two men carried it. Mr. Gibson stated that Claimant was a "pretty steady" worker.

When Claimant returned to work on December 9, 1999, he brought medical release papers to Mr. Gibson, requesting a few days off. When Claimant returned to work after his extended weekend, he could not complete the 12 hour shift because of back pain. Mr. Gibson informed Bill Adcock that Claimant was unable to work because of back pain. Ben Newton, another supervisor, took Claimant to the hospital. As Claimant left, Mr. Gibson noticed Claimant use his hand to support his back. Claimant's back appeared twisted and crooked and Claimant walked in a twisted position.

Donald Odell Simmons testified that he has worked for Employer for five years. In 1999, Mr. Simmons was a joiner and occasionally worked with Claimant. In the latter part of 1999, Mr. Simmons and Claimant often took breaks together.[14] During one break, Mr. Simmons observed Claimant wince in pain as he stood up from his chair. Claimant explained he had re-injured an old back injury sustained from previous employment as a tugboat captain. One week later Claimant was hospitalized for his back pain. Upon returning to work, Claimant could not complete his 12-hour shift, and returned to the doctor for his back injury.

Andrew Earl testified that he works for Asset Control Services, an investigative surveillance company. He conducted a 6-day video surveillance of Claimant's activities. Mr. Earl observed Claimant walking with a cane in a restricted manner, walking without a cane in his house, entering cars, driving a car, and working on a push boat in Mississippi. Mr. Earl was not aware of any editing of the videotapes.

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[14]Mr. Simmons was unsure if this was in December 1999.

Winston Steiner testified that he also is employed by Asset Control Services. Mr. Steiner conducted video surveillance of Claimant. He observed Claimant working on his car, squatting down outside of a drugstore and walking around the area. Mr. Steiner too was not aware of any editing of the video tape.

Employer's Exhibit 18 is the deposition of William (Billy) White, taken post trial on February 9, 2001. Mr. White has worked for Employer for the past six years as marine joiner. He was Claimant's partner in the later part of 1999, until Claimant stopped working.[15]

When Mr. White and Claimant began working together, Claimant did not appear to have a back problem. Claimant never complained of back pain or the inability to work. Claimant took an extended weekend and when he returned to work he complained of back pain. Claimant could barely stand up and stated he injured his back, but did not explain how. Mr. White was aware Claimant sustained a back injury two to three years earlier while working on a tugboat for another company.

In the latter part of 1999, Mr. White and Claimant installed furniture into a ship. They moved beds, clothing lockers, desks, and shelves, etc., into the staterooms. The beds disassembled into smaller pieces, with the largest piece measuring seven feet by four feet. The clothing lockers weighed about 100 pounds. Usually two men carried the furniture together. However, if they had to maneuver around a corner only one man could carry the item through the bulkhead or door. If possible, Claimant and Mr. White used a dolly.

Employer's Exhibit 19 is the deposition of Sharron Cannon, taken post trial on March 1, 2001. Ms. Cannon has been a claims adjuster since October 1984, and is employed by AIG. In December 1999, Ms. Cannon was assigned to handle the claim brought by Claimant against Employer, the insured. Ms. Cannon sent multiple Choice of Physician forms to Claimant via mail prior to Christmas 1999, and received the completed choice of physician form on January 11, 2000. Claimant selected Dr. Crotwell as his orthopedist.[16]

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[15]Prior to this job, Mr. White had previously worked with Claimant and stated that Claimant appeared to not have a back problem.

[16]*See* Employer's Exhibit 5.

Prior to receiving Claimant's completed choice of physician form, Ms. Cannon had sent Claimant to Dr. Crotwell because he was her orthopedist of choice. Dr. Fineburg's office contacted her for authorization of treatment with Dr. Wiggins, another orthopedist, but as she preferred Claimant to be seen by Dr. Crotwell she only authorized treatment with him. Once Claimant chose Dr. Crotwell as his physician of choice, Ms. Cannon refused to authorize treatment with another doctor.

Ms. Cannon ceased authorizing Claimant's treatment with Dr. Crotwell after reviewing the medical records from Singing River Hospital. The medical report from Claimant's initial examination on December 3, 1999 did not relate Claimant's complaints to any specific work injury.

Employer's Exhibit 17 contains two video surveillance tapes of Claimant, which totaled about 40 minutes of surveillance. These tapes documented Claimant's activities on March 24 and 25, 2000, April 24, 2000, and December 12, 13, and 14, 2000. Claimant was observed climbing into the driver's side of a car, looking under the hood of a car, squatting down in front of a newspaper vending machine outside the Save-Rex Pharmacy, and walking with and without a cane. Claimant was also observed operating a tugboat.

Claimant's Exhibit 5 is Claimant's personnel file while employed by Employer. Claimant first worked for Employer from August 12, 1998 through October 14, 1998. On October 19, 1999, Claimant was re-hired by Employer. On October 22, 1999 Claimant's rate of pay increased from $14 per hour to $15 per hour.

Claimant's Exhibit 6 and Employer's Exhibit 2 are Claimant's wage records while employed by Employer. Claimant was paid for 9 weeks of work, dating from October 27, 1999 through December 22, 1999. Claimant received a bonus on January 14, 2000. During this period, Claimant worked 308 regular hours with the amount earned for these hours being $4,653. Claimant's gross wages, including his bonus pay, holiday pay, overtime pay and regular pay, totaled $5,445. Claimant's 1998 wages while working for Employer totaled $12,811. In 1998, Claimant received $4,912 of non-employee compensation from Prevost Industries.

Claimant's Exhibit 18 is his LS-200, report of earnings. Claimant reported no income from January 14, 2000 through March 28, 2000. From April 1, 2000 through October 13, 2000, Claimant reported income of $175 per week while employed by

K.R. Borries Construction. Claimant also reported earning $279 while working for B. B. Contractors from May 5, 2000 through May 12, 2000.

Claimant's Exhibit 8 contains a letter written by Ms. Mclemore and a letter written by Kenneth Borries. These two letters discuss Claimant's employment condition and rate of pay while employed at K. R. Borries Construction Company.

Claimant's Exhibit 19 and Employer's Exhibit 3 contain the wage records of three other Employer employees: Perry Rodgers, Ronald Harding, and Albert Higgenboth. Perry Rodgers's wage checks dated from February 18, 1999 through December 23, 1999. He worked 1,648 regular hours and earned $18,152. Mr. Rodgers earned about $11 per hour.[17] Ronald Harding's wage checks dated from January 7, 1999 to December 23, 1999. Mr. Harding worked 1,910.5 regular hours and earned $24,185. Mr. Harding earned about $13 per hour. Albert Higginboth's wage checks dated from January 7, 1999 to December 23, 1999. Mr. Hibbenboth worked 1,904 regular hours and earned $21,478. Mr. Higgenboth earned about $11 per hour.

Claimant's Exhibit 18 is Claimant's pre-hearing statement (LS-18). Claimant's Exhibit 16 is correspondence from the Office of Workers' Compensation Program. Employer's Exhibit 12 is interrogatories to Claimant and Employer's Exhibit 13 is Claimant's answers to the interrogatories. Employer's Exhibit 14 is Employer's request for production of documents and Employer's Exhibit 15 is Claimant's responses for the request of production. Claimant's Exhibit 7 and Employer's Exhibit 4 are Claimant's social security itemized statement of earnings.

Medical Evidence

Claimant's Exhibit 9 and Employer's Exhibit 10 are Claimant's medical records from Singing River Hospital. On October 27, 1990, Claimant was admitted to the hospital and diagnosed with lumbar strain. In February 1994, Claimant was admitted to the emergency room (ER) and diagnosed with low back pain. Claimant reported this pain as developing after working in an awkward position.

[17]To find the approximate hourly wage, I divided the total amount earned working regular hours, by the total number of regular hours worked.

On December 8, 1999, Claimant was admitted to the Singing River ER with back and knee pain. Claimant was treated by Dr. Cockrell, who noted that Claimant experienced back pain for one month and knee pain for about one to two weeks prior to admittance. Claimant reported back pain on and off for many years, the first episode occurring several years earlier.[18] After performing a physical examination and obtaining x-rays, Dr. Cockrell diagnosed Claimant with muscular back pain and arthralgia of the left knee. Claimant was returned to work within 1-2 days and released with no work limitations.

Claimant was re-admitted to the same ER on December 14, 1999, with the chief complaint of low back pain. He was examined by Dr. Plotka, who noted that Claimant worked earlier in the day until he experienced severe back pain. After a physical examination, Dr. Plotka's impression was lumbosacral disc syndrome. Claimant was treated with various medications and requested to follow-up with Dr. Wiggins, an orthopedist.[19] Claimant was released to return to work on December 16, 1999 with restrictions.

Employer's Exhibit 7 is the deposition of Dr. Steven Fineburg, taken on January 25, 2001.[20] Dr. Fineburg is licensed in internal medicine and operates a family practice. He examined Claimant on December 17, 1999. Claimant complained of back and leg pain, resulting from work, but did not mention a specific injury.

After obtaining Claimant's history, Dr. Fineburg performed a physical examination and opined Claimant suffered from muscle spasms. Dr. Fineburg believed Claimant's discomfort was more exaggerated than what was apparent on physical examination. He recommended Claimant see Dr. Wiggins, an orthopedist, to determine the extent of his physical injuries. Dr. Fineburg did not render an opinion as to Claimant's work capabilities at this time. In May 2000, Dr. Fineburg reviewed

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[18]It was noted that Claimant was diagnosed with back and knee pain as a result of a something that occurred on December 18, 1997. (CX 9, page 2)

[19]*See* Claimant's Exhibit 15, pharmacy records of dispensed medication.

[20]Claimant's Exhibit 10 and Employer's Exhibit 6 are Dr. Fineburg's records.

a videotape of Claimant.[21] After watching the video and observing Claimant's actions, Dr. Fineburg did not believe Claimant to be disabled or unable to work.

Employer's Exhibit 9 is the deposition of Dr. William Crotwell, taken on February 6, 2001.[22] Dr. Crotwell is a board certified orthopedist and an expert in the field of orthopedic surgery. He believed Claimant had been referred by AIG. Dr. Crotwell examined Claimant on December 21, 1999 and January 4, 2000. Claimant reported a work injury on December 3, 1999, which resulted from performing repetitive lifting. Claimant complained of back pain and spasms, as well as left leg spasms. He did not discuss any history of major back problems.[23]

After obtaining Claimant's history, Dr. Crotwell performed a physical examination and obtained x-rays of Claimant's back. Dr. Crotwell believed Claimant suffered from muscle spasms. His overall impression was lumbar strain and a knee strain. Dr. Crotwell opined Claimant had chronic degenerative arthritis of the back because Claimant had a history of back spasms and back strains that pre-dated his employment in 1999 with Employer. Dr. Crotwell believed Claimant's acute spasms of December 1999 were temporary and his back would fully recover to its preexisting state of back arthritis, allowing Claimant to reach MMI by January 18, 2000. However, Dr. Crotwell's treatment ended on January 4, 2000, because AIG denied authorization for further treatment.

Dr. Crotwell opined the cause of Claimant's complaints as resulting from chronic lifting, lifting in awkward positions while not using proper body mechanics, and bending with the knees while keeping his back straight. From all indications, Dr. Crotwell believed Claimant had a muscle spasm in December 1999, due to chronic lifting, which was consistent with Claimant's duties for Employer. He believed Claimant's work activity aggravated or exacerbated the muscle spasms or strain in Claimant's back. Dr. Crotwell agreed with Claimant when he told two co-workers that he suffered from an old back injury. Claimant had chronic back problems in the

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[21]It is unclear whether this videotape was Employer's Exhibit 17, but I assume it to be.

[22]Claimant's Exhibit 11 and Employer's Exhibit 8 are Dr. Crotwell's medical records.

[23]Dr. Crotwell examined an ER record, dated October 27, 1990, when Claimant had complained of back pain and was diagnosed with back strain. Dr. Crotwell testified that this single incident in no way changed his impression of Claimant's current condition.

past. On December 3, 1999, something "triggered" Claimant's muscle spasms, and Dr. Crotwell believed that "trigger" to have been the repetitive lifting.

Dr. Crotwell further believed Claimant had no disability as a result of this December 3, 1999 injury. He stated Claimant could continue working as a joiner, provided he was educated in the use of proper body mechanics. Dr. Crotwell reviewed videotape surveillance of Claimant taken in March 2000. After watching the tape and observing Claimant's behavior, Dr. Crotwell believed Claimant to be a malingerer, symptom magnifier, and not suffering from any disability.

Claimant's Exhibit 21 and 23 is the deposition of Dr. Joe Ray, taken on January 29, 2001 and March 1, 2001.[24] Dr. Ray is a board certified orthopedic surgeon. He evaluated Claimant on December 8, 2000. Claimant reported back pain beginning in November 1999, resulting from his work as a joiner.

As Dr. Crotwell's records were unavailable for Dr. Ray's review, however, Claimant discussed his previous treatment with Dr. Crotwell. After Dr. Ray performed a physical examination, obtained new x-rays, reviewed x-rays supplied by Claimant, and reviewed Claimant prior medical records, Dr. Ray opined Claimant had mild sclerosis at L4-5.[25] He believed Claimant had chronic degenerative lumbar disc disease at one or more levels with an irritated radiculitis.

Dr. Ray opined Claimant's current condition was triggered by Claimant's work duties with Employer. Claimant had no back pain prior to his December 3, 1999 injury. His back pain began during his work as a joiner performing duties in tight spaces in awkward positions doing medium to heavy lifting. The mechanics of heavy/medium lifting in bent-over positions over time were consistent with Dr. Ray observations. Dr. Ray did not believe Claimant's onset of symptoms were caused by his 6-month sailing expedition.

Dr. Ray, like Dr. Crotwell, believed Claimant had pre-existing degenerative disc disease prior to his December 1999 injury. Some event or activity triggered a problem

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[24]Claimant's Exhibit 14 is Dr. Ray's medical records. *See* Claimant's Exhibit 13, Claimant was referred to Dr. Ray by Coastal Family Health Center.

[25]Claimant brought x-rays dated December 21, 1999.

with Claimant's back. It appeared to Dr. Ray, through the history Claimant related with regards to his joiner duties and onset of pain, that Claimant experienced an aggravation of a pre-existing condition while working for Employer.

Dr. Ray was unable to opine with regards to MMI because he believed Claimant had never been thoroughly evaluated for a disabling low back condition. Therefore, he recommended Claimant undergo a lumbar MRI and evaluation by neurologist, Dr. Fleet, to determine whether there was "affectation" of nerves along the spine.[26] Dr. Ray believed the MRI and evaluation to be both reasonable and necessary. Dr. Ray wanted to re-examine Claimant after the MRI and evaluation by Dr. Fleet. He prescribed various medications, which he believed to be reasonable and necessary for Claimant's condition. Dr. Ray also believed Claimant unable to pursue his regular work as a joiner. He did, however, believe Claimant capable of performing light duty work.

Dr. Ray reviewed one videotape of Claimant. This surveillance recorded on December 12, 13, and 14, 2000, showed Claimant operating a tugboat. After watching this, Dr. Ray remained unconvinced Claimant sustained only a temporary aggravation. From a medical perspective, he believed Claimant capable of performing the work depicted in the videotape because it differed from joiner activities.

Findings of Fact and Law

Causation

Section 20 (a) of the Act provides claimant with a presumption that his disabling condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed which could have caused, aggravated or accelerated the condition. *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Stevens v. Tacoma Boat Bldg. Co.*, 23 BRBS 191 (1990). The Section 20 (a) presumption operates to link the harm with the injured employee's employment. *Darnell v. Bell Helicopter Int'l, Inc.*, 16 BRBS 98 (1984). It has been consistently held that the Act must be construed liberally in favor of Claimant. *Voirs v. Eikel*, 346

[26]An MRI focuses on the soft tissue elements, whereas x-rays focus on the bone structure.

US 328, 333 (1953); *St. John Stevedoring Co. v. Wilfred*, 818 F.2d 397, 399 (5th Cir. 1987).

Once the claimant has invoked the presumption the burden shifts to the employer to rebut the presumption with substantial countervailing evidence. *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989). If the Section 20 (a) presumption is rebutted, the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

Claimant began working for Employer on October 21, 1999. He was employed as a joiner when he injured his back on December 3, 1999. Prior to December 3, 1999, Ms. Williams, Bill White and Claimant testified that Claimant had no injury to his back. Immediately prior to Claimant's employment with Employer, Claimant and his fiance sailed along the Florida coast for six months, beginning around June 1999. Claimant sailed his 36-foot Islander with little assistance from his finance and performed all of the "strenuous" labor. Ms. Williams testified that Claimant performed the "hard work" of weighing anchor, pulling sails and steering. As Claimant wore shorts, a light shirt, and at times went bare chested, Ms. Williams was able to observe Claimant's back. She noticed no curvature or twisting of it. In fact, Ms. Williams testified that Claimant had no physical health problem during these six months.

Bill White, Claimant's work partner, testified that when he and Claimant began working together for Employer in October 1999, Claimant had no apparent back problem. Mr. White had previously worked with Claimant on another job and stated that Claimant never had any problems with his back. Prior to Claimant's extended weekend around December 8, 1999, Mr. White never heard Claimant complain of back pain or the inability to work.

Claimant testified that he had some minor back problems in prior years. The Singing River Hospital medical records indicated that Claimant had been admitted for minor back pain in October 1990, February 1994 and December 1997. Claimant testified, however, he experienced no further back pain until December 3, 1999. Nevertheless, Claimant continued working and performing his duties as a joiner. During a break one day, Donald Simmons observed Claimant wince in pain as he stood up from his chair. At that time, Claimant stated he believed he had possibly re-injured an old back injury he sustained from working on a tugboat.

On December 8, 1999, after working an 8-hour shift, the pain became so severe that Claimant was taken to the emergency room of Singing River Hospital. Donald Ray Gibson testified that he saw Claimant leave for the hospital. He noticed Claimant use his hand to support his back. Claimant's back appeared twisted and crooked and Claimant "walked in a twisted position." Ms. Williams also testified that following Claimant's injury in December 1999, Claimant's spine no longer appeared straight.

When Claimant arrived at Singing River Hospital on December 8, 1999, he complained of lower back pain and left leg pain. He did not indicate at this time that his back pain was work related because he said he was afraid of losing his job. Claimant was afraid of Billy Adcock, the project superintendent. Claimant had never before worked for Mr. Adcock, but prior to Claimant's injury Mr. Adcock commented to him about the quickness of his work. Claimant was afraid he would lose his job if Mr. Adcock knew he had been injured on the job.

At the Singing River Hospital emergency room (ER), Dr. Cockrell, after performing a physical examination and obtaining x-rays, diagnosed Claimant with muscular back pain. Claimant was given prescription pain medication and released to return to work within one to two days. Claimant returned to work on December 9, 1999. He worked his 8-hour shift, filed his necessary paperwork with his supervisor Donald Ray Gibson, and took an extended weekend. Claimant continued working until December 14, 1999, when the pain became so severe that he had to be taken to the ER again. Claimant testified that this pain was like nothing he had ever before experienced. At the ER, Claimant was diagnosed by Dr. Plotka with lumbosacral disc syndrome.

Claimant was next examined by Dr. Steven Fineburg on December 17, 1999. He diagnosed Claimant with muscle spasms and recommended he be evaluated by an orthopedist to determine the extent of his physical injuries. Dr. Fineburg did not opine as to the cause of Claimant's muscle spasms.

Dr. Crotwell, an orthopedist, examined Claimant on December 21, 1999 and January 4, 2000. He performed a physical exam, obtained Claimant's history and ordered x-rays of Claimant's back. The physical exam revealed the objective finding that Claimant experienced muscle spasms. The x-rays showed Claimant to suffer from moderate degenerative disc disease with some scoliosis. Dr. Crotwell's impression was lumbosacral strain to the back.

Dr. Crotwell opined the cause of Claimant's complaints as chronic lifting, lifting in awkward positions while not using proper body mechanics, and bending with the knees while keeping his back straight. From all indications, he believed Claimant had a muscle spasm in December 1999, due to chronic lifting, which was consistent with Claimant's duties for Employer. Dr. Crotwell further explained that Claimant had chronic back problems in the past. He stated that something triggered Claimant's current muscle spasms. He believed that trigger to have been repetitive lifting. Dr. Crotwell believed Claimant's work activity for Employer aggravated or exacerbated the muscle spasms or strain in Claimant's back.

Dr. Ray, an orthopedic surgeon, examined Claimant on December 8, 2000. Claimant complained of back pain and related it to his duties as a joiner. Dr. Ray performed a physical examination, obtained new x-rays, and reviewed x-rays supplied by Claimant. He opined that Claimant suffered from degenerative lumbar disc disease at one or more levels with an irritated radiculitis.

Dr. Ray believed Claimant's onset of pain and symptoms were causally related to the heavy lifting and working in awkward positions Claimant was required to do while performing his joiner duties. Claimant experienced no back pain until December 3, 1999, when something triggered his pain. Dr. Ray believed the trigger to have been repetitive lifting. Dr. Ray, like Dr. Crotwell, also opined that Claimant had degenerative disc disease prior to his December 1999 injury. This injury was, therefore, an aggravation of a preexisting condition.

Claimant has established with his own testimony, as well as that of Ms. Williams and Bill White, that he did not have a disabling back condition prior to December 3, 1999. All doctors who examined Claimant, including Drs. Cockrell, Plotka, Fineburg, Crotwell and Ray, opined that Claimant did apparently suffer some physical harm on December 3, 1999. Drs. Crotwell and Ray specifically opined that Claimant's joiner duties caused his back pain and symptoms.

Claimant was employed as a joiner when he injured his back on December 3, 1999. A joiner builds the interior of ships and installs its individual components. Claimant, his partner Bill White, and supervisor Donald Ray Gibson testified that two weeks prior to the December 3, 1999 injury, Claimant and Mr. White were moving furniture into the ship for installation. They carried beds, clothing lockers, desks, shelves, cabinets and safes, etc., into the hull of the ship. The clothing lockers

weighed 100 pounds and the cabinets ranged in weight between 30 and 150 pounds. Claimant described the safes as "heavy, heavy, heavy." They carried furniture together unless a dolly could be used. If they had to turn a corner, there was only enough room for one of them to maneuver. This individual, then, bore the entire weight of the item.

Claimant is 6 feet 3 inches tall. The hull of the ship was not as high. Therefore, Claimant often squatted and awkwardly positioned himself while carrying the items into the ship. Due to the size restrictions of the rooms, Claimant was unable to use "good body mechanics" while working.

In sum, Claimant has established through his testimony and that of others that working conditions existed which could have caused, accelerated or aggravated Claimant's muscle spasms and strain and the physicians who tested him concur. Therefore, Claimant is entitled to the § 20(a) presumption.

To rebut Claimant's §20(a) presumption of causation, Employer offered the testimony of Bill White and Donald Simmons, maintaining that Claimant did not immediately tell either man how he injured his back while working for Employer. Instead of refuting that Claimant suffered a harm, however, these men's testimony instead served to substantiate Claimant's contention that he did in fact suffer a harm. Employer also maintains that as Claimant did not immediately report his injury as work-related on December 8, 1999, the injury was not a result of his work activities. However, Claimant credibly testified that he was afraid of losing his job if he reported a work-related injury.

I do not find Employer to have offered substantial and countervailing evidence sufficient to rebut Claimant's §20(a) presumption, but even if Employer's evidence was sufficient evidence for rebuttal, the evidence when weighed as a whole is sufficient to establish Claimant suffered a harm on December 3, 1999 and working conditions existed which could have caused, accelerated or aggravated this harm. Claimant has established causation.

Nature and Extent

Having established an injury, the burden now rests with Claimant to prove the nature and extent of his disability. *Trask v. Lockheed Shipbuilding Construction Co.*,

17 BRBS 56, 59 (1985). A claimant's disability is permanent in nature if he has any residual disability after reaching maximum medical improvement (MMI). *Id*. at 60. Any disability before reaching MMI would thus be temporary in nature.

The date of maximum medical improvement is defined as the date on which the employee has received the maximum benefit of medical treatment such that his condition will not improve. The date on which a claimant's condition has become permanent is primarily a medical determination. *Manson v. Bender Welding & Mach. Co.*, 16 BRBS 307, 309 (1984). The date of maximum medical improvement is a question of fact based upon the medical evidence of record regardless of economic or vocational consideration. *Louisiana Insurance Guaranty Assoc. v. Abbott*, 40 F.3d 122, 29 BRBS 22 (CRT) (5th Cir. 1994); *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184, 186 (1988); *Williams v. General Dynamics Corp.*, 10 BRBS 915 (1979).

Claimant was examined by Drs. Cockrell, Plotka and Fineburg in December 1999. These doctors did not comment with regards to whether Claimant reached maximum medical improvement. Drs. Crotwell and Ray, however, did discuss MMI.

Dr. Crotwell examined Claimant on December 21, 1999 and January 4, 2000. After the January 4th examination, Dr. Crotwell opined Claimant suffered from a temporary back strain that would improve to the point that his condition should return to its preexisting state of back arthritis. He believed Claimant would, therefore, reach MMI on January 18, 2000. However, Dr. Crotwell never re-examined Claimant after January 4, 2000. While Dr. Crotwell subsequently observed Claimant in a videotape and concluded that Claimant had fully recovered, he had no medical data by which to support his opinion.

Dr. Ray, on the other hand, examined Claimant on December 8, 2000. He opined Claimant had not reached MMI. He reasoned that Claimant has not been thoroughly evaluated for a disabling low back condition, and as such, it is not possible to determine whether Claimant has reached MMI.

Because Dr. Ray was the most recent physician to examine Claimant and assess his condition, I accept the opinion of Dr. Ray over that of Dr. Crotwell and find Claimant has not reached MMI. Thus, any compensation awarded Claimant will be temporary in nature.

The question of extent of disability is an economic as well as medical concept. *Quick v. Martin*, 397 F.2d 644 (D.C. Cir. 1968); *Eastern S.S. Lines v. Monahan*, 110 F.2d 840 (1st Cir. 1940). A claimant who shows he is unable to return to his former employment establishes a prima facie case of total disability. The burden then shifts to the employer to show the existence of suitable alternative employment. *P&M Crane v. Hayes*, 930 F.2d 424, 430 (5th Cir. 1991); *N.O. (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038, 14 BRBS 1566 (5th Cir. 1981). Furthermore, a claimant who establishes an inability to return to his usual employment is entitled to an award of total disability compensation until the date on which the employer demonstrates the availability of suitable alternative employment. *Rinaldi v. General Dynamics Corp.*, 25 BRBS 128 (1991). Issues relating to nature and extent do not benefit from the Section 20 (a) presumption. The burden is upon Claimant to demonstrate continuing disability (whether temporary or permanent) as a result of his accident.

Claimant was injured on December 3, 1999. He continued working as a joiner until December 14, 1999, when he was taken to Singing River Hospital. Claimant was released to work on December 16, 1999. However, Claimant testified he was no longer physically able to perform the strenuous duties of a joiner. Therefore, Claimant's last day of work for Employer was December 14, 1999.

On December 17, 1999, Claimant was examined by Dr. Fineburg, an internist. Claimant presented with back pain. Dr. Fineburg performed a physical examination and diagnosed Claimant with muscle spasms. He was unable to make a determination with regards to disability or Claimant's ability to work.

Dr. Crotwell, an orthopedist, examined Claimant on December 21, 1999 and January 4, 2000. After performing an exam and obtaining x-rays, Dr. Crotwell opined Claimant had sustained a lumbosacral strain to the back and a knee strain. He believed Claimant's condition was only temporary and expected Claimant to fully recover from this muscle strain by January 18, 2000. Dr. Crotwell believed Claimant suffered no disability as a result of this injury and could resume working as a joiner, provided he was educated in the use of proper body mechanics. Dr. Crotwell's treatment of Claimant ended on January 14, 2000 when the insurance company denied authorization for further treatment. In March 2000, Dr. Crotwell reviewed videotape surveillance of Claimant. After watching the tape and observing Claimant, Dr. Crotwell believed Claimant had fully recovered from his back strain.

On December 8, 2000, Claimant was examined by Dr. Ray, an orthopedic surgeon. He performed a physical examination, obtained new x-rays, and reviewed Claimant's previous x-rays. He opined Claimant had chronic degenerative lumbar disc disease on one or more levels, initiated by Claimant's work activities. However, Dr. Ray believed Claimant needed a more adequate medical work-up for a complete medical evaluation. He recommended Claimant undergo an MRI and evaluation by a neurologist.

Dr. Ray believed Claimant could not longer pursue his regular work as a joiner because of his lumbar scoliosis. However, he believed Claimant could, from a medical perspective, perform light duty work, as evidence by the videotape he watched in February 2001. Dr. Ray explained that the work depicted in the videotape was not Claimant's regular work as a joiner, and as such, did not involve the same types of activity Claimant previously had performed.

I find between the two physicians, Dr. Ray is in a better position for assessment of Claimant's disability and work capabilities. He examined Claimant in December 2000. Like Dr. Crotwell, Dr. Ray obtained and reviewed x-rays, as well as performed a physical examination. However, Dr. Ray noted that Claimant had never undergone a thorough and complete medical evaluation with regards to his lower back. He recommended an MRI be performed, as well as an evaluation by a neurologist, but in the interim felt Claimant capable of performing light duty work, and approved of Claimant's job as a tugboat operator.

I accept the opinion of Dr. Ray over that of Dr. Crotwell, and find Claimant's testimony, as well as that of Dr. Ray's, evidence sufficient to show that Claimant is not capable of returning to his previous employment of joiner. As such, and since Employer offered no evidence of suitable alternative employment, I find Claimant to have been temporarily totally disabled from December 14, 1999 through March 31, 2000, and temporarily partially disabled thereafter.[27]

Claimant, on April 1, 2000, began working in a light duty capacity for K. R. Borries Construction Company and has continued to work for that company in some

[27]In violation of the time frame established by the Notice of Hearing, Employer offered a vocational report at the hearing (Employer's Exhibit 16), the admission of which was denied. (Tr. p.16)

capacity since that time. While employed by Employer, Claimant earned $15 per hour. When Claimant returned to work for K. R. Borries Construction Company, he earned $175 per week, while performing office work from April 1, 2000 through November 13, 2000. Beginning November 14, 2000 and continuing, Claimant was re-assigned to tugboat captain, earning $12 per hour and working an average of 20 hours per week, which equates to $240 per week.[28] Therefore, even though he returned to work, Claimant has sustained a loss of wage earning capacity beginning April 1, 2000 and continuing, for which he is entitled to temporary partial disability benefits.

Average Weekly Wage

Claimant's average weekly wage is determined at the time of injury by utilizing one of three methods set forth in Section 10 of the Act, 33 U.S.C. § 910(a)-(c).

Section 10(a) applies when claimant has worked in the same or comparable employment for substantially the whole of the year immediately preceding the injury and provides a specific formula for calculating annual earnings. Where claimant's employment is regular and continuous, but he has not been employed in that employment for substantially the whole of the year, the wages of similarly situated employees who have worked substantially the whole of the year may be used to calculate average weekly wage pursuant to Section 10(b). Section 10(c) provides a general method for determining annual earning capacity where Section 10(a) or (b) cannot fairly or reasonably be applied to calculate claimant's average weekly wage at the time of the injury. *Empire United Stevedores v. Gatlin*, 936 F.3d 819, 25 BRBS 26 (CRT) (5th Cir. 1991); *Palacios v. Campbell Indus.*, 633 F.2d 840, 12 BRBS 806 (9th Cir. 1980); *Lobus v. I.T.O. Corp. of Baltimore, Inc.*, 24 BRBS 137 (1991).

In this instance, Section 10(a) is not applicable because Claimant did not work for Employer for substantially the whole of the year prior to his injury. Also, I find it inappropriate to use Section 10(b), because the three other joiners working for Employer earned on average only $11.67 per hour, whereas Claimant earned $15 per

[28]Ms. Mclemore testified at hearing that Claimant works an average of 20 hours per week as a tugboat captain. Likewise, in a letter written by her, Ms. Mclemore stated Claimant works an average of 20 hours per week (CX 8). As such, it is that figure I shall use for the average number of weekly hours Claimant works as a tugboat captain.

hour.[29] However, while I find that these three employees were not similar with respect to hourly wages earned, I do find the 50 weeks worked by Ronald Harding and Albert Higgenbotham to be representative of the hours which would have most probably been available to Claimant. Consequently, I find a hybrid of Sections 10(b) and 10(c) offers the fairest approach.

During the 50 weeks in 1999, Mr. Harding worked 1910.5 hours. Mr. Higgenbotham, also a joiner, worked 1904 hours during the same period. An average of these two men's hours is 1907.25, and I find that to be a fair estimation of Claimant's hours had he worked the same 50 weeks. The difference, of course, between these workers is that Claimant earned $15 per hour at the time of his injury. Consequently, I find the most equitable approach to achieve a just result is to simply multiply $15 per hour by 1907.25 hours and divide by the fifty weeks in which these hours were accumulated. The results is $572.25 per week, which I find to be a fair representation of Claimant's average weekly wage at the time of his accident.

Medicals

In order for a medical expense to be assessed against the employer, the expense must be both reasonable and necessary. *Parnell v. Capitol Hill Masonry*, 11 BRBS 532, 539 (1979). Medical care must be appropriate for the injury. 20 C.F.R. § 702.402. A claimant has established a prima facie case for compensable medical treatment where a qualified physician indicates treatment was necessary for a work related condition. *Turner v. Chesapeake & Potomac Tel. Co.*, 16 BRBS 255, 257-258 (1984). The claimant must establish that the medical expenses are related to the compensable injury. *Pardee v. Army & Air Force Exch. Serv.*, 13 BRBS 1130 (1981). *Suppa v. Lehigh Valley R.R. Co.*, 13 BRBS 374 (1981). The employer is liable for all medical expenses which are the natural and unavoidable result of the work injury, and not due to an intervening cause. *Atlantic Marine v. Bruce*, 661 F.2d 898, 14 BRBS 63 (5th Cir. 1981), *aff'd* 12 BRBS 65 (1980).

Employer took Claimant to the Singing River Hospital on December 8 and 14, 1999, where Claimant was treated by Drs. Cockrell and Plotka. Claimant was next examined by Dr. Fineburg on December 17, 1999. Dr. Fineburg recommended that

[29]Perry Rodgers earned $11 per hour; Ronald Harding earned $13 per hour; and Albert Higgenboth earned $11 per hour.

Claimant go to an orthopedist to determine the extent of his physical injuries. Claimant was referred to Dr. Crotwell by Sharron Cannon, the AIG claims adjuster, in December 1999. Claimant was subsequently examined by Dr. Crotwell and chose Dr. Crotwell as his orthopedist of choice, as evidenced by the completed physician of choice form, signed by Claimant and dated January 11, 2000.

Ms. Cannon testified that she ceased authorizing Claimant's treatment with Dr. Crotwell after reviewing the medical records from Singing River Hospital. Because the medical report from Claimant's initial examination on December 3, 1999 did not relate Claimant's complaints to any specific work injury. In other words, Ms. Cannon decided that Claimant's injury was not work-related, and as such, denied all future medical coverage.

Once the employer has refused to provide treatment or to satisfy a claimant's request for treatment, the claimant is released from the obligation of continuing to seek employer's approval. *Pirozzi v. Todd Shipyards Corp.*, 21 BRBS 294 (1988); *Betz v. Arthur Snowden Co.*, 14 BRBS 805 (1981). *See generally Slattery Assoc. v. Lloyd*, 725 F.2d 780, 16 BRBS 44 (CRT) (D.C. Cir. 1984). The claimant then need only establish that the treatment subsequently procured on his own initiative was necessary for treatment of the injury, in order to be entitled to such treatment at the employer's expense. *Rieche v. Tracor Marine*, 16 BRBS 272 (1984).

Once AIG denied authorization by Dr. Crotwell for further medical treatment, Claimant had no further medical treatment for his back injury until October 10, 2000, when he went to the Coastal Family Health Center complaining of back pain due to a work-related injury. Claimant was assessed with low back pain and referred to Dr. Ray, an orthopedist. Claimant, therefore, chose Dr. Ray as his physician.

Dr. Ray examined Claimant on December 8, 2000. He performed a physical examination, obtained new x-rays and reviewed Claimant's past x-rays. Like Dr. Crotwell, Dr. Ray opined that Claimant's back injury was causally related to Claimant's work as a joiner while employed by Employer. Dr. Ray diagnosed Claimant with degenerative lumbar disc disease at one or more levels. He requested Claimant have a more thorough medical evaluation. Dr. Ray, therefore, recommended Claimant have a lumbar MRI and evaluation with a neurologist, specifically Dr. William Fleet. Dr. Ray testified that the MRI and evaluation by a neurologist were both reasonable and necessary for Claimant's medical treatment.

Because Employer refused medical treatment, Claimant was free to choose another doctor to treat his back injury. Claimant chose Dr. Ray, a board certified orthopedic surgeon, as his physician of choice. As Dr. Ray's evaluation was necessary for the treatment of Claimant's injury, Employer is liable for the costs associated with the visit to Dr. Ray. In addition, I find that the lumbar MRI and evaluation by neurologist, Dr. Fleet, are a necessary and reasonable medical expense, as is Claimant's continued treatment by Dr. Ray. Employer is liable for these treatments and for all other related future medical expenses.

Section 14 (e) penalties

Under Section 14 (e) an employer is liable for an additional 10% of the amount of worker's compensation due where the employer does not pay compensation within 14 days of learning of the injury, or fails to timely file a notice of controversion within 14 days. 33 U.S.C. §914. In this instance, Employer learned of the injury on December 13, 1999, and filed Notice of Controversion on December 17, 1999. Therefore, as Employer filed Notice of Controversion within 14 days of learning of the injury, no § 14 (e) penalties are assessed against Employer.

ORDER

It is hereby **ORDERED** that:

1. Employer/Carrier shall pay to Claimant temporary total disability compensation from December 14, 1999 to March 31, 2000, based on an average weekly wage of $572.25;

2. Employer shall pay to Claimant compensation for his temporary partial disability from April 1, 2000 through November 13, 2000, based upon the average weekly wage of $572.25, reduced by Claimant's residual wage earning capacity of $175 a week;

3. Employer shall pay to Claimant compensation for his temporary partial disability from November 14, 2000 and continuing, based upon the average weekly wage of $572.25, reduced by Claimant's residual wage earning capacity of $240 a week;

4. Pursuant to Section 7 of the Act, Employer/Carrier are responsible for the expense of Claimant's office visit with Dr. Ray, lumbar MRI , evaluation by Dr. William Fleet, and further treatment with Dr. Ray, as well as all other reasonable and necessary medical expenses Claimant might so incur;

5. Employer shall pay interest on all of the above sums determined to be in arrears as of the date of service of this ORDER at the rate provided by in 28 U.S.C. §1961 and *Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984);

6. Counsel for Claimant, within 20 days of receipt of this ORDER, shall submit a fully supported fee application, a copy of which must be sent to opposing counsel who shall then have 10 days to respond with objections thereto. *See* 20 C.F.R. § 702.132.

7. All computations of benefits and other calculations which may be provided for in this ORDER are subject to verification and adjustment by the District Director.

SO ORDERED this 11th day of July, 2001, at Metairie, Louisiana.

A
C. RICHARD AVERY
Administrative Law Judge

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